

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF**

77-4010

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JACOB GOLDBLATT,

PETITIONER,

V.

SECRETARY OF LABOR,

RESPONDENT.

ON PETITION FOR REVIEW OF THE NEGATIVE
DETERMINATION OF THE SECRETARY OF LABOR

BRIEF FOR PETITIONER

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JACOB GOLDBLATT,

Petitioner,

v.

SECRETARY OF LABOR,

Respondent.

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No. 77-4010

BRIEF FOR PETITIONER

THE ISSUE

Whether the certifying officer of the United States Department of Labor properly concluded that the employees of Gotham Fifth Ave. Inc. are not entitled to be certified eligible to apply for Worker Adjustment Assistance, under Title II, Chapter 2 of the Trade Act of 1974.

APPLICABLE STATUTE

The Trade Act of 1974.

Title II - Relief from Injury Caused by Import Competition.

Chapter 2 - Adjustment Assistance for Workers.

U.S. Code Congressional and Administrative News 1974. Volume 2, Page 2338, etc.

Section 221- provides the method by which workers can apply to the U.S. Department of Labor for certification of eligibility to apply for adjustment assistance.

Section 222 states:- The Secretary shall certify a group of workers as eligible to apply for Adjustment Assistance under this chapter if he determines:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated,

(2) that sales or production or both of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm, or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3) the term "contributed importantly" means, a cause which is important, but not necessarily more important than any other cause.

Section 223 (b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred -

(1) more than one year before the date of the petition on which such ~~such~~ certification was granted.

Section 250- Judicial Review.

Pursuant to section 250 of the Trade Act of 1974, any worker, group of workers, or such authorized representative of such worker or group, aggrieved by the final determination issued pursuant to the Act, may file a petition for review of such determination with the United States Court of Appeals for the circuit in which such worker or group of workers is located.

Legislative History of Title II, Chapter 2 of the Trade Act of 1974.

U.S. Code and Administrative News - Vol. 4 Page 7205.

The Committee approved major modifications in the existing program of trade adjustment assistance for workers displaced by increased imports. These changes would make adjustment assistance more accessible to these workers. In addition to easing eligibility tests, the level of benefits would be increased.

STATEMENT OF CASE

Gotham Fifth Ave. Inc. is a New York corporation, and for over 30 years was engaged in manufacturing and selling fine men's clothing in New York City. It had operated profitably during most of this period. The quantity of men's clothing, being imported into the United States, began to increase rapidly in 1970. Year by year, ever greater amounts flooded the American market. It became almost impossible for American manufacturers to compete with importers. More and more, small and medium sized American manufacturers of men's clothing were forced to liquidate.

During the Fall of 1973, Gotham discovered that its sales had declined. By early 1975, the decrease in sales became very serious, and it found itself overstocked with merchandise it had previously manufactured. As a result of decreased sales, Gotham had suffered considerable losses in the past few years, and its fiscal position became tenuous. It therefore decided to discontinue manufacturing, temporarily, and to concentrate on selling off the surplus stock at reduced pricesⁱⁿ order to attain a more liquid position. Pressed by creditors, Gotham filed a petition under Chapter XI of the Bankruptcy Act in July 1975, and attempted to reorganize.

However, due ^{to} ~~the~~ the adverse economic conditions then prevailing in the clothing industry, caused primarily by the ever increasing quantities of clothing imported into this country, reorganization became impossible. Gotham Fifth Ave., after settling with its creditors, closed its doors on March 31, 1976. The employees, on whose behalf a petition for eligibility was filed became separated from their employment at about the time of closing.

The Secretary of Labor denied the application of the employees of Gotham Fifth Ave. Inc. for adjustment assistance under Title II Chapter 2 of the Trade Act of 1974. This is a petition to review and set aside the negative determination of the Secretary of Labor, pursuant to Section 250 of the Act.

SUMMARY OF ARGUMENT

The Certifying Officer of the U.S. Department of Labor based his determination on an erroneous evaluation of the facts. He failed to take into consideration the obvious intent of Congress, and the very purpose of Title II Chapter 2 of the Act.

ARGUMENT

In the discussion of the History of the portion of the Trade Act of 1974 applicable to this case, the choice of language clearly demonstrates the intention of Congress that it be liberally construed in favor of workers who become unemployed as a result of increased import competition. This intent is also evident from the language used in the Act itself. The underlying purpose of this part of the Act seems to be, the alleviation of suffering of those workers to some extent, and the attempt to help ^{them} adjust and find new employment.

There can be no doubt that, for a number of years, the clothing industry in the United States had been badly hurt by the ever increasing quantities of clothing imported into this country. The facts in this case clearly demonstrate that Gotham Fifth Ave. suffered irreparable damage, as a direct consequence of increased imports. Not only was this firm forced to reduce production, it had to discontinue production entirely, and eventually had to close its doors. This resulted in the workers of Gotham becoming unemployed.

It is evident that all the eligibility requirements of Section 222 of the Trade Act of 1974 were met. Even a casual review of the facts in the case will substantiate the accuracy of this statement. Nor were the workers barred by the one year limitation of Section 223, (b),1 of the Act. They became unemployed on February 27, and March 31, 1976, and the petition for adjustment assistance was filed, on their behalf, in September of the same year.

The Certifying Officer contends that the employees of Gotham are barred under Section 223, (b),1, because the firm discontinued production in early 1975. He seems to imply that only those engaged in production are eligible for adjustment assistance. Such reasoning negates the meaning and purpose of the Act.

Clothing, like any other commodity, is not made to be stored. It is made to be sold. Production is only one phase of the overall manufacturing operation. There are a number of people employed by a manufacturing concern who have nothing at all to do with production. The buyer of materials and trimmings, salesmen, and office personnel serve very useful functions in the overall conduct of a business, yet, have nothing to do with production. If the reasoning of the

Certifying Officer were to prevail, only those workers who are engaged in the actual production of the garments would be eligible for adjustment assistance. Everyone else in the firm would be out in the cold.

Title II Chapter 2 of the trade Act of 1974, is not limited to only those employees engaged in the actual production of an article. If Congress had intended to so limit this portion of the Act, it would have used language that would clearly show this limitation. The very intention of Congress and purpose of the Act would be thwarted, if such a narrow and restricted interpretation of the Act were to be employed. The Act is broad in scope, and offers aid to all employees of a firm who lose their jobs because of increased import competition.

The Certifying Officer further contends that, from early 1975 until its liquidation, Gotham was engaged in selling at retail. He therefore concludes that the employees of Gotham were engaged in a service, and ineligible for adjustment assistance. He cites a Notice of Determination by the Department of Labor in Pan American World Airways, Inc. It's difficult to see any similarity between that case and the case at hand. Transporting people from one ~~one~~ place to another is obviously a service. Gotham, on the other hand, was selling a product, clothing. The fact that the clothing was sold at retail does not make it a service, in the sense that Pan Am was performing a service, anymore than if they were sold wholesale. The clause "decreased sales, or production, or both" in Section 222 (2) does not differentiate between wholesale and retail sales. Here again, if Congress intended to limit the word "sales" to wholesale only, it would have employed language to spell out that intention clearly. In Section 222 (3), the term "contributed importantly" was used. In order to assure a proper interpretation of the term, and to avoid any ambiguity, a clarifying paragraph was added under subsection (3).

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